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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2010-545

12 **R. NATHAN NEWBY, AKA NATHAN R.**
13 **NEWBY**

1005 Live Oak Terrace
Sunnyvale, California 94086
14 Registered Nurse License No. 575625

A C C U S A T I O N

15 Respondent.

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19 Complainant alleges:

20 PARTIES

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 2. On or about January 3, 2001, the Board of Registered Nursing issued Registered
25 Nurse License Number 575625 to R. Nathan Newby, aka Nathan R. Newby (Respondent). The
26 Registered Nurse License was in full force and effect at all times relevant to the charges brought
27 here and will expire on December 31, 2010, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2644 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY/REGULATORY PROVISIONS

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

7. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or

injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

“(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.”

8. California Code of Regulations, title 16, section 1444, states:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

"(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

“(b) Failure to comply with any mandatory reporting requirements.

"(c) Theft, dishonesty, fraud, or deceit.

"(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code."

9. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board/Registrar/Director may request the administrative law judge to direct a licentiate found to

1 have committed a violation or violations of the licensing act to pay a sum not to exceed the
2 reasonable costs of the investigation and enforcement of the case.

3 FIRST CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct)

(Bus. & Prof. Code §§ 2761(a), 2762(b))

5 11. Respondent has subjected his license to disciplinary action for unprofessional conduct
6 under sections 2761(a) and 2762(b), in that in 2008 he was arrested, and is still in custody, for
7 driving while under the influence of alcohol and gross vehicular manslaughter. The circumstances
8 are as follows:

9 12. In December 2008, the California Highway Patrol responded to an accident in which
10 respondent was involved. Respondent was observed driving on I-280 in the wrong direction
11 (driving northbound in the southbound lanes) when he hit another car head-on. Due to his state of
12 intoxication, respondent failed to realize that he was traveling in the wrong direction on a divided
13 highway despite other vehicles driving toward him and passing him. Victim 1 (the driver) and
14 Victim 2 (the passenger) were traveling southbound when respondent's vehicle collided head-on
15 into their vehicle in the number two lane. This collision caused Victim 1 to sustain life
16 threatening injuries and also caused catastrophic damage to Victim 1's vehicle. Victim 2
17 sustained fatal injuries and was pronounced dead at the scene. Respondent's vehicle rolled over
18 and caught fire, causing respondent to become trapped inside his vehicle while it burned.
19 Respondent was removed from the burning vehicle prior to it becoming fully engulfed in flames.
20 Respondent sustained minor injuries to his arm and forehead as a result of the collision.

21 13. Once respondent was removed from the vehicle and identified by his Illinois Driver
22 License, the police officers at the scene questioned respondent about the events of the collision.
23 Respondent said that he was driving northbound on I-280 when he was suddenly hit by an
24 unknown vehicle. However, upon contact with respondent, the CHP police officers detected
25 signs and symptoms of alcoholic beverage intoxication. The officers conducted a DUI
26 investigation and determined that respondent was under the influence of alcoholic beverages.
27 Respondent was then arrested and transported to Stanford Hospital where a blood chemical test
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1 was conducted. He was subsequently booked into the San Mateo County Jail and is currently
2 awaiting trial on five (5) felony counts and one (1) misdemeanor.

3 SECOND CAUSE FOR DISCIPLINE
4 (Unprofessional Conduct)
(Bus. & Prof. Code §§ 2761(a), 2762(b))

5 14. Respondent has subjected his license to disciplinary action for unprofessional conduct
6 under sections 2761(a) and 2762(b), in that on or about April 2, 2004, he was convicted for
7 driving while under the influence of alcohol. The circumstances are as follows:

8 15. On April 2, 2004, an El Dorado Sheriff was driving on Pioneer Trail in El Dorado
9 County. The sheriff saw respondent's Green Nissan parked along the westbound shoulder of the
10 road with the parking lights on. The sheriff noticed respondent was seated, hunched over, in the
11 driver's seat. The sheriff turned his police vehicle around and pulled in behind respondent's
12 vehicle. As the sheriff approached respondent's vehicle, he noticed it was running and the radio
13 was on very loud. The sheriff knocked on respondent's window several times until respondent
14 finally woke up and looked up at the officer. The sheriff could see that respondent's eyes were
15 very red, glassy, and watery. Respondent reached for his ignition key and turned the vehicle off.
16 Respondent then reached down and attempted to put the vehicle into gear, but was unable to do
17 so. Respondent then reached for the ignition key and restarted the vehicle. It appeared that
18 respondent was intoxicated and preparing to drive. The sheriff opened the door and asked
19 respondent if he was okay. Respondent said he was fine, but was very tired. The sheriff could
20 smell the odor of alcohol and respondent's speech was very slow and slurred. The sheriff then
21 ordered respondent to turn off the car. Respondent asked the sheriff what the problem was and
22 the sheriff told him that he was parked in the road. Respondent responded by saying he thought
23 he was parked in the parking lot. The sheriff then asked respondent for his driver's license and
24 respondent handed him his Visa credit card. The sheriff noticed that respondent was wearing a
25 wristband for a nightclub called "Altitude." The sheriff asked respondent if he had been drinking
26 at Altitude and respondent said, "yes." Respondent told the sheriff that he had consumed three to
27 four beers.

1 16. The sheriff conducted a series of field sobriety tests and, afterwards, determined that
2 Respondent was driving while under the influence of alcohol. The sheriff arrested, transported,
3 and booked respondent into the El Dorado County Jail on DUI charges.

4 THIRD CAUSE FOR DISCIPLINE
5 (Conviction)
6 (Bus & Prof. Code §§ 2761(f), 2762(c))

7 17. Complainant realleges the allegations contained in paragraphs 15 and 16 above, and
8 incorporates them herein by reference as if fully set forth.

9 18. Respondent has subjected his license to disciplinary action under Code sections 490,
10 2761(f), and 2762(c) in that on or about April 29, 2004, in a criminal proceeding entitled *The*
11 *People of the State of California v. Robert Nathan Newby*, in the El Dorado Superior Court, Case
12 Number S04CRM0615, respondent was convicted by a plea of nolo contendere of one count of
13 violating Vehicle Code Section 23152(b) (Driving while having a 0.08% or higher blood alcohol),
14 a misdemeanor. Respondent was sentenced to six (6) days in the El Dorado Sheriff's Work
15 Release Program, four (4) years court probation, restricted use of his driver's license for 90 days,
16 and ordered to pay restitution of \$2,222.00.

17 PRAYER

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
19 and that following the hearing, the Board of Registered Nursing issue a decision:

20 1. Revoking or suspending Registered Nurse License Number 575625, issued to R.
21 Nathan Newby, aka Nathan R. Newby R. Nathan Newby.

22 2. Ordering R. Nathan Newby to pay the Board of Registered Nursing the reasonable
23 costs of the investigation and enforcement of this case, pursuant to Business and Professions
24 Code section 125.3;

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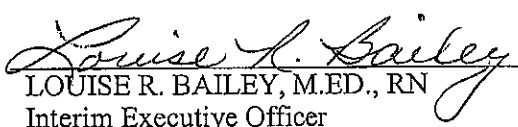
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1 3. Taking such other and further action as deemed necessary and proper.

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DATED: 4/23/10


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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